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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1252

EX PARTE WILLIAM F. BRACK,
Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND, AND BRIEF IN SUPPORT THEREOF.

Petition

The Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland entered on January 16, 1947, denying the petitioner's motion for reargument.

Statement

The facts are briefly these: (R. 1)

The petitioner, on May 15, 1946, filed a petition with the Bench of Baltimore City wherein he claimed that a certain decree had been passed against him, based, as stated in the opinion of the Court, on the testimony of one Kanode. Said Kanode, shortly after the passage of the decree, was disbarred by the Supreme Bench of Baltimore City and imprisoned for fraud and other crimes. This petitioner then filed promptly a motion to strike said decree, alleging con-

spiracy, barratry, perjury and fraud on the part of said Robert E. Kanode, Charles F. Rheb and William B. Romans, who have since been imprisoned for other crimes as set forth in Appendix to Motion for Reargument (R. 23).

The petitioner, though he has made earnest and diligent efforts, has been unable to get the Supreme Bench of Baltimore City to act on his motion even though the Court signed a show-cause order why said decree should not be stricken out. There was never a final hearing on said motion; but notwithstanding this, the Court signed another order citing this petitioner for contempt for failure to deliver certain bonds mentioned in said decree.

This petitioner employed Edward L. Ward, member of the Baltimore City Bar, to represent him and though urged to do so, said Edward L. Ward, refused to proceed with the motion for new trial but wrongfully persuaded this petitioner to comply with a compromise of the terms of the decree, which compromise, known to said Edward L. Ward, was against the interests of this petitioner and which decree would ordinarily have been stricken in view of the circumstances and facts involved.

In this alleged compromise, forced on this petitioner by Edward L. Ward and another member of the Baltimore City Bar, Carlyle Barton, they, Ward and Barton, both of whom had previously served as counsel for this petitioner, took advantage of this petitioner to his serious damage and detriment. In the course of other employment said Carlyle Barton obtained a check payable to this petitioner, which he refused to turn over to this petitioner until and unless he complied with the compromise of the decree of the Court. This petitioner had certain very pressing obligations and was greatly in need of funds to save his property from foreclosure. Said Ward and Barton, having occupied the close relationship of attorney and client, were in possession

of this information and used it to the detriment of this petitioner, by conspiring to coerce him against his will to pay the sum of $6,000.00 to compromise a decree of the Court instead of answering the erroneous order nisi for contempt filed against this petitioner before the motion for rehearing had been acted upon as was and still is desired by this petitioner.

This petition alleges that the action of said Ward and Barton, who had been employed to represent him, but who coerced and overreached him instead, was hostile to and against his interest and that as a result of such hostile action of petitioner's attorneys, Ward and Barton, this petitioner lost the sum of $6,000.00 in addition to other losses. In his petition to Supreme Bench of Baltimore City, brought under the Acts of 1929, State of Maryland, Chapter 370, this petitioner urged that disciplinary action be taken against said Ward and Barton.

Questions Presented

1. Did the Supreme Bench of the City of Maryland err in dismissing the petition of this petitioner without a hearing (R. 2)?

2. Did the Court of Appeals of Maryland err in dismissing the appeal of this petitioner on the grounds that the state statute gives the right of appeal from lower courts to the attorney if found guilty but not to any other person (R. 16)?

3. Is not the statute of Maryland (Appendix p. 15), which restricts the right of appeal to the attorney involved and denies this to a citizen not an attorney, so discriminatory as to be in violation of the due process and equal protection clauses of the Constitution of the United States (Amendments 5 and 10)?

Jurisdiction

The petitioner is a citizen of the United States. The jurisdiction of this Court is invoked under the guarantee of the Constitution of the United States to every citizen of the United States of equal protection of the laws (14th Amendment) and of due process of law (5th Amendment). Both of these fundamental guarantees have been denied to this petitioner by the courts of his state and by the Statute invoked (Appendix p. 15), and by the persons and organizations charged with the responsibility of seeing that he is given equal protection and due process of law.

Reasons for Granting the Writ

The decisions in Courts below (R. 16), were arbitrary and without proper investigation and hearing in the trial court and without a proper recognition in the appellate court of the failure of the lower court to give to the petition due process of law. This petitioner having been denied his constitutional guarantees under the United States Constitution should and must obtain relief from this Court, through a Writ of Certiorari.

The purpose of a Writ of Certiorari is to supply defects of justice in cases obviously entitled to redress, and yet unprovided for by the ordinary forms of proceedings. *Ex Parte Kelly,* 221 Ala. 339, 128 So. 443.

Certiorari is a suitable form by which a court of last resort may exercise its final revisory and supervisory powers to correct and to prevent errors and abuses. *Conte* v. *Roberts,* 192 A. 814; *Fainardi* v. *Dunn,* 46 R. I. 344, 128 A. 207.

WHEREFORE, it is respectfully submitted that this petition should be granted.

F. REGIS NOEL,
Attorney for Petitioner.

April 15, 1947.

BRIEF IN SUPPORT OF PETITION

Opinion Below

The opinion of the Court of Appeals of Maryland, dismissing petitioner's appeal December 13, 1946, is reported in, — Maryland —, 50 Atlantic 2d 432. Memo opinion of same court denying petitioner's motion for reargument January 16, 1947, is reported in — Maryland —, — A. 2d —.

Statement

The essential facts are stated in the preceding petition, the record (R. 1) and in this brief.

Questions Presented

The questions presented are stated in the foregoing petition, page 3.

Specifications of Errors to Be Urged

The Maryland Court of Appeals erred:

1. In ignoring fact that the lower court, Supreme Bench of Baltimore City, did not make a proper investigation and did not afford an adequate hearing before denying the relief asked for by the petitioner.

2. In construing the Maryland Statute involved as giving a right only to an attorney found guilty and not to any other person (Appendix p. 15, R. 16).

Statute Invoked

Acts of 1929, Chapter 370, Article 10

(Acts of 1929, State of Maryland, Chapter 370, Article 10—Appendix p. 15)

Summary of Argument

The petitioner relied on the loyalty and integrity of his attorneys, Edward L. Ward and Carlyle Barton, but said

Ward and Barton did not give to this petitioner that loyalty that an attorney owes to his client.

That in a certain case in which this petitioner had been held in contempt he had a right, when he felt that only by a motion for a new trial would he obtain justice, to insist that his attorney, Edward L. Ward, proceed as directed to file and prosecute such a motion. Instead of rendering this service desired by his client said Ward refused to proceed with the motion for new trial and wrongfully compelled this petitioner to comply with a compromise of the terms of the decree (R. 2).

In thus forcing on this petitioner this compromise for payment of $6,000.00 said Edward L. Ward improperly violated that confidence a client has in his attorney, much to the injury of this petitioner.

That in preparing the paper and negotiating the compromise payment said Edward L. Ward was aided by another attorney of the Baltimore City Bar, who had likewise represented petitioner in previous matters, and that this attorney, Carlyle Barton, in the course of other employment obtained a check payable to this petitioner, which Barton refused to turn over to this petitioner until and unless petitioner complied with the compromise of the decree of the Court heretofore referred to, thus taking advantage of information obtained in the confidential relationship of attorney and client as to this petitioner's great need for funds to save his property from foreclosure.

That throughout their negotiations with this petitioner said Edward L. Ward and Carlyle Barton conspired together to the detriment of this petitioner and their entire conduct was hostile to his interest and constituted professional misconduct, malpractice, fraud, deceit and conduct prejudicial to the administration of justice.

In his petition, this petitioner alleged unethical conduct on the part of said attorneys, Ward and Barton, and asked

the Supreme Bench of Baltimore City to assume jurisdiction, make all necessary investigation, grant a full and complete hearing, as required by law, and take such disciplinary action as the exigencies demanded and the Court deemed meet and proper. On June 13, 1946, the Supreme Bench of Baltimore City denied this relief resulting in the appeal of petitioner to the Court of Appeals of Maryland (R. 15).

ARGUMENT

I

Attorneys Owe the Highest Degree of Loyalty to Their Clients

As set forth in the Brief and Appendix of Appellant and in his motion for reargument in No. 38 in the Court of Appeals of Maryland, it is clear and unmistakable that Attorneys Edward L. Ward and Carlyle Barton did not render to their client, this petitioner, that service, loyalty and advice to which he was entitled. On the contrary in the course of their employment as counsel for this petitioner they willfully, wrongfully and with hostility conspired and coerced him into making a settlement of a case involving the payment by him of the sum of $6,000.00 in settlement or compromise of a decree, notwithstanding this decree had been stayed and there was pending and is still pending a motion to strike this decree, a fact well known to Ward and Barton. This motion to strike was based on fact that in the main the evidence was from sworn testimony of witnesses which testimony was false and perjured and later these witnesses, Robert E. Kanode, Charles Fulton Rheb, William B. Romans, and others (R. 21) were tried in the Criminal Court of Baltimore, convicted and sentenced to heavy fines and imprisonment for crimes involving moral turpitude. Each of these defendants, whose sworn testimony had weighed heavily against this petitioner, have

been shown to be utterly untrustworthy and their statements are not to be relied upon.

But in spite of this clear showing of improper evidence in the form of sworn testimony from witnesses who could not be believed, said Ward and Barton did not render unto this petitioner that service which he needed to make amends, as far as possible, for the wrong done to him through the evidence adduced from men and women later convicted of infamous crimes.

The Courts of our Land, Federal and State, have not been slow to speak plainly on the duty of an attorney to his client.

> "A lawyer is bound to conduct himself as a fiduciary or trustee occupying the highest position of trust and confidence, so that in all his relations with his client, it is his duty to exercise and maintain the utmost good faith, honesty, integrity, fairness and fidelity. *Commonwealth Finance Corporation v. McHarg,* 282 F. 560."
>
> "It is not only the duty of an attorney to inform the client of any personal interest he may have with respect to the matter intrusted but also to make a clear, complete, and accurate disclosure of all material, information or facts concerning the subject matter of the employment, together with the legal consequences of the state of facts disclosed. Corpus Juris Secundum, page 959."

II

The Maryland Court of Appeals Wrongfully Construed the Maryland Statute Involved

In its opinion dismissing this petitioner's appeal, the Court of Appeals of Maryland wrongfully construed Article 10, Section 17 of Chapter 370 of the Acts of 1929. One of the contentions of this petitioner in his appeal from the Supreme Bench of Baltimore City was that the Supreme Bench acted in an arbitrary manner, reaching its decision

and dismissing this petitioner's complaint without a hearing, and without any effort made by it to ascertain the truth or falsity of the charges made in said petition and thereby denying this petitioner the equal protection and due process of the law guaranteed by the United States Constitution.

The Court of Appeals of Maryland recognized this in the opening paragraph of the Court's opinion:

> "He (this petitioner) asked the Supreme Bench to assume jurisdiction, make such investigation as the case might require, and take such disciplinary action as it deemed proper under the circumstances."

Yet the highest court of the petitioner's state makes no explanation as to why the very investigation and hearing so necessary properly to determine so vital an issue of misconduct of an attorney to his client was not made. The Court of Appeals decided the case on the narrow point that the statute in question gives certain rights to one citizen denied to another. The office of attorney is a high and responsible one, but the cloak of that office does not and should not take away an equal protection and due process of the law from another citizen just because the other happens not to be an attorney.

The only other comment of importance by the Court of Apepals, other than citing the rights of an aggrieved client and the final duty resting on the courts and the legal profession, was to comment on a civil action between this petitioner and his former counsel. The statute so important to this petitioner in obtaining justice from disloyal counsel, after he had been turned away by the Bar Association with the admonition to go to the Courts, is not a civil statute—it is criminal in its main concept. Nor does it follow that action on demurrers in the said civil suit (*Brack* v. *Barton and Ward*, 45 A. (2d) 100) must control in an appeal from an adverse decision in the violation of a criminal statute.

Just as this petitioner appealed to the Court of Appeals of Maryland from an arbitrary action of the Supreme Bench of Baltimore City contrary to justice and public policy and not from the exercise of sound discretion, this petitioner is compelled to appeal to the highest court of his nation when his constitutional rights are trampled upon and he is denied that equal protection and process of the law that is fundamental and sacred and secured and guaranteed to every American citizen.

Every person is entitled to his day in court but this has been denied to this petitioner. First by the arbitrary action of the trial court in not granting a proper hearing and then by the Court of Appeals of Maryland in evading the error in the court below and basing its opinion on the narrow concept that the statute was restricted to one class—an attorney found guilty.

It is conceded that if the Supreme Bench had dismissed petitioners complaint after full investigation and hearing, the proper taking of testimony and receiving of proper evidence, this petitioner would have had his day in court and could not be heard to complain. It is this petitioner's firm belief that the petition on its face was sufficient to have set the process of the Court in action and caused the Court to carry out the mandate of the people through the Legislature to inquire into and punish, if facts warranted, attorneys who had been found guilty of improper practice and misconduct. This the Supreme Bench of Baltimore refused to do and this refusal was treated in silence by the Court of Appeals of Maryland.

III

Due Process of Law and the Equal Protection of the Laws Are Specifically Guaranteed under the Federal Constitution and Cannot Be Taken Away by Legislative Enactment.

> "* * * Nor shall any person be deprived of life liberty, or property, without due process of law * * * 5th Amend. U. S. Constitution."

A right to which a citizen is entitled is property of the highest order and any deprivation of a right guaranteed by the several states and the United States to her citizens is a violation of due process of law in the highest sense.

As difficult as it is to define "Due Process of Law" it is a real thing to every American citizen. Perhaps as good a definition as any has been given by Judge Cooley to the effect that due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. (*Ivie* v. *Bailey*, 319 Mo. 474, 5 S. W. (2d) 50.)

It is this refusal by the Courts of Petitioner's state to recognize the very heart blood of "due process of law" that compels him to come to this, the highest Court of the land, for justice in seeing that he receives that which is guaranteed to him. A state statute that denies to him the right of appeal from an inferior court but grants that right to another citizen solely on the grounds that such a citizen is an attorney is in violation of the constitutional guarantee of due process of law and such a statute is and should be held unconstitutional.

> "* * * Nor shall any State deprive any person of life liberty or property, without due process of law;

> nor deny to any person within its jurisdiction the equal protection of the laws. 14th Amend., U. S. Constitution."

Without any violence to the accepted principle that the 14th and 5th Amendments do not forbid guarantees to persons of certain classes, a state law that is designed to protect its citizens from misconduct on the part of attorneys is a direct violation of the 14th Amendment when the very person whom the law seeks to protect—the client—hasn't the same privilege as the attorney to carry an appeal to his appellate court. In the present case, if the finding of the Supreme Bench of Baltimore City had been adverse to the petitioner's attorneys and the facts in the lower court similar, that the attorneys had been found guilty without proper hearing and full investigation, the Court of Appeals very properly would have reviewed the case and reversed the lower court for reaching a decision without a full and complete hearing.

But under the narrow interpretation of the Maryland Court or the bad legislation of the Maryland Legislature, either of which is subject to correction by this Court because of the Federal questions involved, a citizen is denied relief from unethical conduct on the part of his attorney. The Maryland Court of Appeals said in dismissing petitioner's appeal:

> "An individual can report unethical conduct of an attorney which he believes justifies disciplinary action to the Court, the Bar Association, or the State's Attorney. * * * The duty of disciplinary action against an attorney rests upon the courts and the legal profession."

But those high sounding phrases are actually empty words, when, as in petitioner's case, the Bar Association

and State's Attorney refused to act and the trial court acts in an arbitrary, one-sided manner without proper investigation and full hearing and the appellate court dismisses petitioner's appeal by simply saying the statute restricts its review to appeals from attorney, that this petitioner has no appeal just as he had no tribunal to really hear his grievance. Such a situation, it matters not the state nor the tribunal, is violative of not only the spirit but the letter of that sacred document that is the Supreme Law of the Land—the Constitution.

Conclusion

In conclusion, the decisions below and the attitude and actions of the courts and other organizations and officers of the petitioner's state are such a flagrant violation of the constitutional rights of this petitioner that unless this court grants this petition and causes this entire matter to come before this court for review and consideration, this petitioner will be denied his right to be heard and have the injustices which he has suffered corrected in an orderly and lawful manner.

The courts of Maryland perverted a statute which was primarily designed to protect clients and litigants and permitted it to be used for exactly the opposite purpose, viz: to protect and exculpate members of the Bar to the detriment of the clients and litigants; not only this, they corrupted and used an unilateral, discriminatory, illegal and unconstitutional statute resulting in deprivation of due process and property loss to this petitioner.

To this petitioner it is indeed a matter of grave importance that he have his real day in court; but of greater significance and importance is it whether the courts of one of the several states of this nation shall be permitted to

ignore the rights guaranteed to every citizen of the United States.

Therefore, it is respectfully submitted that his petition should be granted.

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Attorney for Petitioner,
Suite 813 Evans Bldg.,
1420 New York Ave., N. W.,
Washington, D. C.

April 15, 1947.

APPENDIX

Acts of 1929, State of Maryland, Chapter 370, Article 10

(1935 Supplement, Annotated Code of Maryland, Flack, Acts 1927-1935 inclusive)

Misconduct of Attorneys Negligence—Disbarment Suspension

10. The judges of the several courts of this State shall observe the demeanor of all attorneys practising the law before them, who shall use any indecent liberties to the lessening of the grandeur and authority of their respective courts, and shall discountenance and punish the same according to the nature of the offense, either by suspending such attorney from his practice for a time, not exceeding thirty days, or by fine (at the discretion of the court) not exceeding Fifty Dollars for any one offense.

10A. Whenever a judge of any of the several courts of this State shall have reasonable ground to believe that any attorney admitted to the practice of law in his court is guilty of professional misdonduct, malpractice, fraud, deceit, crime involving moral turpitude, or conduct prejudicial to the administration of justice, he shall issue an order directed to the Bar Association and/or State's Attorney or the City or County, as the case may be, in which his said court is located, requiring said Bar Association and/or State's Attorney to prosecute the charges named in said order on a day specified therein, which day shall not be less than fifteen or more than sixty days from the date of said order, and shall direct that a copy of said order be forthwith served on said attorney. If it appear that said charges cannot be served on said attorney within the State the same may be served upon him without the State by mail or otherwise, as the Court shall by its order direct.

10B. Charges of professional misconduct, malpractice, fraud, deceit, crime involving moral turpitude, or conduct prejudicial to the administration of justice against any attorney at law may be filed in any court where such attorney is admitted to practice by any bar association acting

through its appropriate committee or by any group of five or more members of the bar and thereupon such proceedings shall be had as if said charges had been filed by the court and specified in the order directing the prosecution thereof, referred to in the proceeding section.

10C. Every charge filed against any attorney shall be in writing and shall be of such particularity as to give him sufficient notice of the evidence to be offered in support of it.

10D. Said charges shall be heard before two or more judges of the judicial circuit in which said Court, wherein such charges have been filed, is located, and the accused attorney shall be afforded full opportunity to be heard and, unless the accused attorney shall in writing elect otherwise, all the testimony taken at said hearing shall be taken down by a stenographer and transcribed as in civil cases. Said hearing shall be governed by the rules of law, evidence and procedure of civil cases, so far as the same may be applicable thereto.

10E. Every attorney who shall, after having an opportunity to be heard, as provided in the preceeding section, be found guilty of professional misconduct, malpractice, fraud deceit, crime involving moral turpitude or conduct prejudicial to the administration of justice, shall, by order of the judges finding him guilty, be suspended or disbarred from the practice of his profession in this State.

10F. Every attorney who shall, after a hearing held as hereinbefore prescribed, be found guilty of professional misconduct, malpractice, fraud, deceit, crime involving moral turpitude or conduct prejudicial to the administration of justice, shall have the right of appeal to the Court of Appeals of Maryland, as in civil cases, except the Court of Appeals shall have the right to review the entire proceedings and affirm, modify, alter or reverse the order from which said appeal is taken as the substantial merits of the cause and the ends of justice may require.

10G. That upon the order of the judges disbarring such accused attorney from the practice of his profession in this State and no appeal being entered theref-om within the

time prescribed for appeals to be taken in civil cases, the Clerk of the Court which has conducted such disbarment proceedings shall send over the seal of said Court, a certified copy of such order with the docket entries in the proceeding to the Clerk of the Court of Appeals of Maryland, and upon receipt thereof the said Clerk of the Court of Appeals of Maryland shall forthwith strike the name of the accused attorney from the register of attorneys in said court and certify that fact to the Clerk of the Supreme Bench of Baltimore City, and upon receipt of such certification each of said Clerks shall forthwith strike the name of such accused attorney from the register of attorneys in his Court.

10H. That if an appeal be taken from the order of the judges disbarring such accused attorney from the practice of his profession in this State and said order be affirmed by the Court of Appeals of Maryland, the Clerk of the Court of Appeals of Maryland shall forthwith strike the name of the accused attorney from the register of attorneys in said court and certify that fact to the Clerks of the Circuit Courts for each county throughout the State and to the Clerk of the Supreme Bench of Baltimore City, and upon receipt of such certification, each of said Clerks shall forthwith strike the name of such accused attorney from the register of attorneys in his court.

11. No attorney, during the time of his suspension of disbarment, shall practice law in this State, in any form either as principal or agent, clerk or employee of another and specifically, without limiting the aforegoing, no such attorney during his suspension or disbarment from practice of law shall appear as attorney or counsellor at law before any court, judge, justice, board, commission or public officer, or prepare any will, mortgage or deed.

11A. Any attorney violating any of the provisions of Section 11 shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than One Thousand Dollars or be imprisoned for not more than one year or both fined and imprisoned, in the discretion of the court.